

Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 77

HOUSE BILL 2110

AN ACT

AMENDING SECTION 14-5312.01, ARIZONA REVISED STATUTES; RELATING TO GUARDIANS
OF INCAPACITATED PERSONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 14-5312.01, Arizona Revised Statutes, is amended
3 to read:

4 14-5312.01. Inpatient treatment; rights and duties of ward and
5 guardian

6 A. Except as provided in subsection B of this section, a guardian of
7 an incapacitated person may consent to psychiatric and psychological care and
8 treatment, including the administration of psychotropic medications, if the
9 care and treatment takes place outside a level one behavioral health
10 facility licensed by the department of health services.

11 B. On clear and convincing evidence that the proposed ward is
12 incapacitated as a result of a mental disorder as defined in section 36-501,
13 and is currently in need of inpatient mental health care and treatment, the
14 court may authorize a guardian appointed pursuant to this title to give
15 consent for the ward to receive inpatient mental health care and treatment,
16 including placement in a level one behavioral health facility licensed by the
17 department of health services and medical, psychiatric and psychological
18 treatment associated with that placement. The evidence shall be supported
19 by the opinion of a mental health expert who is either a physician licensed
20 pursuant to title 32, chapter 13 or 17 and who is a specialist in psychiatry
21 or a psychologist who is licensed pursuant to title 32, chapter 19.1.

22 C. In making its decision to grant authority to a guardian pursuant
23 to subsection B of this section, the court shall consider the cause of the
24 ward's disability and the ward's foreseeable clinical needs. The court shall
25 limit the guardian's authority to what is reasonably necessary to obtain the
26 care required for the ward in the least restrictive treatment alternative.
27 The court may limit the duration of the guardian's authority to consent to
28 inpatient mental health care and treatment and include other orders the court
29 determines necessary to protect the ward's best interests.

30 D. Within forty-eight hours after placement of the ward pursuant to
31 this section, the guardian shall give notice of this action to the ward's
32 attorney. When the attorney receives this notice the attorney shall assess
33 the appropriateness of the placement pursuant to section 36-537, subsection
34 B and section 36-546, subsection H. If requested by the attorney, the court
35 shall hold a hearing on the appropriateness of the placement within three
36 days after receiving that request.

37 E. The behavioral health treatment facility shall assess the
38 appropriateness of the ward's placement every thirty days and shall provide
39 a copy of the assessment report to the ward's attorney. The ward's attorney
40 may attend the ward's evaluation, staffing, treatment team and case
41 management meetings.

42 F. When the ward is admitted to a level one behavioral health
43 treatment facility pursuant to this section, the guardian shall provide the
44 facility with the name, address and telephone number of the ward's attorney.
45 The facility shall include this information in the ward's treatment record.

1 G. Within twenty-four hours after the facility receives any writing
2 in which the ward requests release from the facility, any change in placement
3 or a change in the type or duration of treatment, the facility shall forward
4 this information to the ward's attorney.

5 H. All health care providers, treatment facilities and regional
6 behavioral health authorities shall allow the ward's attorney access to all
7 of the ward's medical, psychiatric, psychological and other treatment
8 records.

9 I. The ward's guardian shall place the ward in a least restrictive
10 treatment alternative within ten days after the guardian is notified by the
11 medical director of the inpatient facility that the ward no longer needs
12 inpatient care. The ward, a representative of the inpatient treatment
13 facility, the ward's attorney, the ward's physician or any other interested
14 person may petition the court to order the facility to discharge the ward to
15 a least restrictive treatment alternative if the guardian does not act
16 promptly to do so.

17 J. If the ward is in a behavioral health treatment facility at the
18 time of the initial hearing on the petition for appointment of a guardian,
19 the court investigator and the ward's attorney shall advise the court of the
20 appropriateness of the placement.

21 K. An attorney appointed pursuant to section 14-5303, subsection C
22 remains the attorney of record until the attorney is discharged by the court.
23 The court shall ensure that a ward whose guardian has been granted mental
24 health treatment authority is represented by an attorney at all times the
25 guardian has that authority. Unless the court finds that the ward has
26 insufficient assets to meet the ward's reasonable and necessary care and
27 living expenses, the ward shall pay the attorney's reasonable fees.

28 L. If deemed necessary to adequately assess a request for mental
29 health treatment authority or to review the ward's placement in a behavioral
30 health treatment facility, the court may order an independent evaluation by
31 either a physician who is licensed pursuant to title 32, chapter 13 or 17 and
32 who is a specialist in psychiatry or a psychologist who is licensed pursuant
33 to title 32, chapter 19.1. If the ward has insufficient funds to pay the
34 total cost of this evaluation, the court may deem all or any part of the
35 evaluator's fee to be a county expense after determining the reasonableness
36 of that fee.

37 M. Instead of ordering an independent evaluation pursuant to
38 subsection L of this section, the court may accept a report conducted on
39 behalf of the behavioral health treatment facility if the court finds that
40 the report meets the requirements of an independent evaluation.

41 N. The court may decide that the ward's right to retain or obtain a
42 driver license and any other civil right that may be suspended by operation
43 of law is not affected by the appointment of a guardian.

44 O. If the court grants the guardian the authority to consent to
45 inpatient mental health care and treatment pursuant to this section, the

1 medical director of a level one behavioral health facility licensed by the
2 department of health services may admit the ward at the guardian's request.

3 P. A guardian who is authorized by the court to consent to inpatient
4 mental health care and treatment pursuant to this section shall file with the
5 annual report of the guardian required pursuant to section 14-5315 an
6 evaluation report by a physician or a psychologist who meets the requirements
7 of subsection A-B of this section. The evaluation report shall indicate if
8 the ward currently needs inpatient mental health care and treatment. If the
9 guardian does not file the evaluation report or if the report indicates that
10 the ward does not need inpatient mental health care and treatment, the
11 guardian's authority to consent to this treatment ceases. If the report
12 indicates that the ward currently needs this treatment, the guardian's
13 authority to consent to this treatment continues. If the report supports the
14 continuation of the guardian's authority to consent to this treatment, the
15 ward's attorney shall review the report with the ward. The ward may contest
16 the continuation of the guardian's authority by filing a request for a court
17 hearing within ten business days after the report is filed. The court shall
18 hold this hearing within thirty calendar days after it receives the request.
19 The guardian's authority continues pending the court's ruling on the issue.
20 At the hearing the guardian has the burden of proving by clear and convincing
21 evidence that the ward is currently in need of inpatient mental health care
22 and treatment.

23 Q. THE COURT MAY DISCHARGE AN ATTORNEY WHO WAS APPOINTED PURSUANT TO
24 SECTION 14-5303, SUBSECTION C SUBSEQUENT TO THE APPOINTMENT OF A GUARDIAN IF
25 IT CLEARLY APPEARS FROM SPECIFIC FACTS PRESENTED BY AFFIDAVIT OR VERIFIED
26 PETITION THAT CONTINUED REPRESENTATION OF THE WARD IS NO LONGER NECESSARY OR
27 DESIRABLE. THE FACTUAL BASIS MUST INCLUDE, AT A MINIMUM, CONSIDERATION OF
28 THE FOLLOWING:

- 29 1. THE NATURE AND HISTORY OF THE WARD'S ILLNESS.
- 30 2. THE WARD'S HISTORY OF HOSPITALIZATION.
- 31 3. THE WARD'S CURRENT AND ANTICIPATED LIVING ARRANGEMENTS.
- 32 4. WHETHER THE WARD'S INPATIENT TREATMENT IS ANTICIPATED TO BE A
33 ONE-TIME HOSPITALIZATION FOR THE PURPOSE OF STABILIZING THE WARD'S CONDITION
34 AND FURTHER HOSPITALIZATIONS ARE NOT LIKELY TO BE NECESSARY.
- 35 5. WHETHER THE WARD'S CURRENT AND ANTICIPATED LIVING ARRANGEMENTS ARE
36 THE LEAST RESTRICTIVE ALTERNATIVES POSSIBLE.

APPROVED BY THE GOVERNOR APRIL 29, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 30, 2002.

Passed the House March 21, 2002,

by the following vote: 54 Ayes,

0 Nays, 6 Not Voting

[Signature]
Speaker of the House

[Signature]
Chief Clerk of the House

Passed the Senate April 22, 2002,

by the following vote: 26 Ayes,

0 Nays, 4 Not Voting

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

H.B. 2110

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this day of , 20 ,

at o'clock M.

Secretary of State

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 25, 2002,

by the following vote: 54 Ayes,

0 Nays, 6 Not Voting

[Signature]
Speaker of the House

Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

25 day of April, 2002,

at 1:52 o'clock P M.

[Signature]
Secretary to the Governor

Approved this 29 day of

April, 2002,

at 11:00 o'clock A M.

[Signature]
Governor of Arizona

H.B. 2110

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 30 day of April, 2002

at 11:50 o'clock P M.

[Signature]
Secretary of State